STATE OF MICHIGAN

COURT OF APPEALS

C.A. KIME, INC., Plaintiff-Appellant,	UNPUBLISHED March 3, 2011
v	No. 295323 Tax Tribunal
TOWNSHIP OF VAN BUREN and COUNTY OF WAYNE, Defendants-Appellees.	LC No. 00-357829

Before: MURPHY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order of the Michigan Tax Tribunal that dismissed plaintiff's request to correct the taxable value of certain parcels it owned because the Tribunal determined that it lacked jurisdiction. Because we hold that the Tax Tribunal properly dismissed the petition, we affirm.

I. FACTS AND PROCEEDINGS

Plaintiff is a developer of residential subdivisions that purchased several parent parcels in Van Buren Township over ten years ago. The parcels were subdivided afterwards, which formed a development known as "Cobblestone Creek." The subdivision resulted in 104 townhouse lots and 154 lots for single family homes. The splitting of these parcels began in 2003 and was completed on May 11, 2005. Before December 31, 2005, plaintiff also completed the installation of public service improvements, which included access roads, sidewalks, curbs, street lighting, storm sewer, water, electric, gas, and underground utilities.

On December 31, 2005, defendants determined the 2006 Estimated True Cash Value ("TCV") for each of these parcels. The assessments included $13,400 in "additions" for each of the townhouse lots, and $20,700 in "additions" for each of the single family home lots. At the

time, defendants relied on MCL 211.34d(1)(b)(viii),[1] which allowed for the installation of public services to count as "additions," which went towards a property's taxable value.

On October 3, 2006, this Court, in an unrelated case, determined that MCL 211.34d(1)(b)(viii) was unconstitutional because it was "inconsistent with the meaning of the term 'additions' as established by Proposal A," which amended the Michigan Constitution. *Toll Northville v Northville Twp*, 272 Mich App 352, 376; 726 NW2d 57 (2006), aff'd in part and vac'd in part 480 Mich 6 (2008).

Plaintiff did not appeal these assessments to the 2006 or 2007 March Boards of Review[2], but instead filed a petition in the Small Claims Division on June 28, 2007, MTT Docket No. 339650, appealing the true cash and taxable values of certain parcels[3] for the 2007 tax year. Plaintiff then appeared at the 2008 July Board of Review, raising for the first time that the 2007 and 2008 assessments were contrary to the *Toll Northville* holding. Plaintiff claimed that the July board could hear the matter because assessing under an unconstitutional statute was a "qualified error" under MCL 211.53b(8). However, the board declined to review the matter because it viewed the protest as a dispute regarding the assessment, which is not a proper consideration for the July board.

After the July Board of Review did not act, plaintiff filed its appeal with the Michigan Tax Tribunal. This petition included all 231 parcels constituting Cobblestone Creek, in addition to the ones initially enumerated in the small claims petition. The parties entered into settlement discussions, resulting in a proposed Stipulation for Consent Judgment. However, the Tribunal denied entry of the proposed consent judgment and dismissed plaintiff's claim because it determined that it lacked jurisdiction, holding in part:

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[1] MCL 211.34d(1)(b): "For taxes levied after 1994, 'additions' means . . . all of the following:

* * *

> (viii) Public Services. As used in this subparagraph, 'public services' means water service, sewer service, a primary access road, natural gas service, electrical service, telephone service, sidewalks, or street lighting. For purposes of determine the taxable value of real property under section 27a, the value of public services is the amount of increase in true cash value of the property attributable to the available public services multiplied by 0.50 and shall be added in the calendar year following the calendar year when those public services are initially available.

[2] The July Board of Review corrects undisputed mistakes of a clerical or typographical nature, unlike the March Board of Review, which considers the validity of assessments. MCL 211.53b(1), (3); MCL 211.30(1), (4).

[3] The parcels included were Nos. 83-114-01-0023-000 through 83-114-01-0092-000.

> The Tribunal also lacks jurisdiction over parcel numbers other than 83-114-01-0023-000 through 83-114-01-0092-000 for the 2007 and 2008 tax years under MCL 211.53a, as the facts alleged by petitioner do not establish a *prima facie* case that the assessment was the result of a clerical error (i.e., "an error of a transpositional, typographical, or mathematical nature") or a mutual mistake of fact (i.e., "an erroneous belief, which is shared and relied on by both parties"). See *International Place Apartment — IV v Ypsilanti Township*, 216 Mich App 104, 109; 548 NW2d 668 (1996); *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247, 256 (2006); *Eltel Associates, LLC v City of Pontiac*, 278 Mich App 588; 752 NW2d 492 (2008); and *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 282 Mich App 29; 761 NW2d 816 (2008) [rev'd 485 Mich 69 (2010)]. Rather, the facts alleged indicate that the subject property's 2007 and 2008 taxable values were increased as a result of public improvement additions to the property, pursuant to MCL 211.34d(1)(b)(viii). However, the increase in the subject properties' taxable values was not the result of an error of a transpositional, typographical, or mathematical nature or an erroneous belief which was shared and relied on by both parties. The facts of this case do not reveal a mutual mistake as to any material fact in the assessments of parcels 83-114-01-0023-000 through 83-114-01-0092-000. Instead, petitioner and respondents relied on the authority of MCL 211.34d(1)(b)(viii), which was later held unconstitutional.

In a follow-up to the last point made in the above quote, the Tribunal noted that prior to "the Supreme Court's decision in *Toll-Northville, supra*, respondent was required by law to add public service improvements to a property's taxable value under MCL 211.34d(1)(b)(viii)."

II. ANALYSIS

While recognizing that the "traditional" means of appealing residential property assessments is to protest before the local board of review in March, and to appeal to the Tribunal by July 31 if the initial protest was unsuccessful, plaintiff argues that the "traditional" way is not the only way to invoke the Tribunal's jurisdiction. Instead, plaintiff argues that the Tribunal erred in not acknowledging plaintiff's ability to appeal the 2007 and 2008 assessments under MCL 211.53b, and by analyzing a statutory provision irrelevant to this case, MCL 211.53a.

The subject-matter jurisdiction of the Tax Tribunal is set by statute, *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239-240; 477 NW2d 492 (1991), and so raises a question of law, which is reviewed de novo. See *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006); *Calabrese v Tendercare of Mich, Inc*, 262 Mich App 256, 259; 685 NW2d 313 (2004).

Pursuant to the Tax Tribunal Act, MCL 205.701 *et seq.*, the Tax Tribunal has exclusive jurisdiction to decide various property-tax matters based either on the subject matter of the proceeding or the type of relief requested. *In re Petition of Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 110-111; 777 NW2d 507 (2009), citing *Wikman v City of Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982). The general statutory timeframe for challenging assessments after December 31, 2006, is MCL 205.735a. That provision states, in relevant part,

that the taxpayer must first protest to the local board of review before the Tribunal can acquire jurisdiction from the filing of a petition on or before July 31 of the tax year involved:

> (1) The provisions of this section apply to a proceeding before the tribunal that is commenced after December 31, 2006.
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> * * *
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> (3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, *the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).*
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> (6) The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved. *The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved.* [Emphasis added.]

The time periods set forth in this statute are jurisdictional, so the failure to meet them usually deprives the Tribunal from taking any action, other than entry of an order of dismissal, on a petition. See *W A Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 338; 686 NW2d 9 (2004). We say "usually" because there are two statutory exceptions that allow the Tribunal to hear a petition that is otherwise barred by MCL 205.735a, those being MCL 211.53a and MCL 211.53b.

Here, there is no dispute that plaintiff did not file a petition with the Tribunal by either July 31 of 2007 or July 31 of 2008, and therefore the Tribunal had no jurisdiction under MCL 205.735a(3) and (6). Recognizing this, plaintiff argues that MCL 211.53b[4] gave the Tax

[4] Although the Tribunal discussed MCL 211.53a in its order dismissing the petition, plaintiff argues that it never invoked MCL 211.53a in the Tribunal, and makes no argument to this Court that it applies. Hence, we only need address MCL 211.53b.

Tribunal the authority to hear its appeal of the July Board of Review's actions. MCL 211.53b stated at the time,[5] in relevant part:

> (1) *If there has been a qualified error*, the qualified error shall be verified by the local assessing officer and approved by the board of review . . . . [A] correction under this subsection may be made in the year in which the qualified error was made or in the following year only.
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> * * *
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> (8) As used in this section, "qualified error" means 1 or more of the following:
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> (a) A clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes.
>
> (b) A mutual mistake of fact.
>
> (c) An adjustment under section 27a(4) or an exemption under section 7hh(3)(b).
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> (d) For board of review determinations in 2006 through 2009, 1 or more of the following:
>
> (i) An error of measurement or calculation of the physical dimensions or components of the real property being assessed.
>
> (ii) An error of omission or inclusion of part of the real property being assessed.
>
> (iii) An error regarding the correct taxable status of the real property being assessed.
>
> (iv) An error made by the taxpayer in preparing the statement of assessable personal property under section 19. [Emphasis added.]

Plaintiff invokes MCL 211.53b(8)(d)(ii) as the sole basis[6] for granting jurisdiction to the Tax Tribunal, arguing that since the entire dispute revolves around defendants erroneously

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[5] MCL 211.53b was amended in 2010, but this is the version that existed at the time.

[6] The briefs filed with this Court confirm the fact that plaintiff has only argued to this Court that the "qualified error" applicable to this case is that found within MCL 211.53b(8)(d)(ii). Allegations of an error regarding the correct taxable status of the real property and "other qualified errors" were made in the petition to the entire tribunal, though without citation to MCL 211.53b(8)(d)(i) and (iii).

assessing the property based on unconstitutional measures, it is necessarily an "error of . . . inclusion."

When interpreting a statute, the primary concern is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). In ascertaining legislative intent, this Court must consider both the plain meaning of the critical words or phrases, as well as their placement and purpose in the statutory scheme. *Green v Ziegelman*, 282 Mich App 292, 302; 767 NW2d 660 (2009). Additionally, the subsections of a statute "are not to be read discretely, but as part of a whole." *In re Sprint Communications Co, LP*, 277 Mich App 311, 313; 745 NW2d 520 (2007).

There are two obstacles prohibiting us from accepting plaintiff's argument. First, the assessing bodies did not err when they assessed the property on December 31, 2005, as having a higher value because of the presence of public improvements. At the time, MCL 211.34d(1)(b)(viii) was a valid statute, and it permitted taxing authorities to increase the taxable value of real property because of the installation of public service improvements on or near the property. This particular section was not declared unconstitutional until October 3, 2006, in *Toll Northville, Ltd*, 272 Mich App at 352.[7] Thus, there can be no dispute that there was no "error" when the public service improvements were factored into the taxable value of plaintiff's properties in 2006. Since there was no "error," let alone a "qualified error," the Tax Tribunal lacked jurisdiction under MCL 211.53b.

Second, we also reject plaintiff's argument that including the public improvements under MCL 211.34d(1)(b)(viii) constituted "an error of … inclusion of part of the real property being assessed." MCL 211.53b(8)(d)(ii). This plain statutory language requires that the error relate to the inclusion of *a part of* the real property that would occur, for instance, when the taxing authority accidentally omitted or included a part of the real property being assessed. Yet, in *Toll Northville* the Court recognized that in the context of Proposal A, "public-service improvements are not physically located on the residential property to be taxed." *Toll Northville*, 480 Mich at 15. Consequently, the public service improvements were not an error of "inclusion" of part of the real property because they are not, and never were, erroneously made *a part of* the real property being taxed. Because any error that occurred was not described by MCL 211.53b(8), the Tax Tribunal lacked jurisdiction, and plaintiff's argument fails.

Accordingly, the Tax Tribunal's dismissal of the case was appropriate, and we need not consider plaintiff's other issues since they are moot. We note that the Tribunal's declarations outside of its jurisdictional analysis, including its analysis of the retroactive-prospective application of the cases holding MCL 211.34d(1)(b)(viii) unconstitutional, was void since such

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[7] The Tribunal did err, however, in failing to recognize this Court's 2006 *Toll Northville* decision as the time from which such assessments were unconstitutional. Even if an application is filed with the Supreme Court, a published opinion of this Court is binding on the Tribunal unless and until the Supreme Court reversed the decision or otherwise rules to the contrary. See MCR 7.215(C)(2); *Straman v Lewis*, 220 Mich App 448, 451; 559 NW2d 405 (1996).

analysis was unnecessary to any that was needed for resolving the jurisdictional question. See *Kasberg v Ypsilanti Twp*, 287 Mich App 563, 566; 792 NW2d 1 (2010) ("[A]ny actions of a court regarding a matter over which it lacks jurisdiction are void.").[8]

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro

[8] In its reply brief plaintiff argues that the result of the Tribunal's holding, and defendants' argument in support of that holding, deprived it of several constitutional rights. However, we do not entertain new arguments raised for the first time in a reply brief. *Curry v Meijer*, 286 Mich App 586, 596 n 5; 780 NW2d 603 (2009). Plaintiff had ample opportunity to raise these constitutional issues in its principal brief of appeal.